

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BARRY EMMETT,

Plaintiff,

V.

UNKNOWN DEFENDANT,

Defendant.

Case No. 6:23-cv-55-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Barry Emmett, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

On March 14, 2023, Judge Mitchell issued a Report recommending that the Court dismiss this case with prejudice for *in forma pauperis* purposes, but without prejudice to refile without seeking *in forma pauperis* status and with payment of the full \$402.00 filing fee. Docket No. 3. A copy of this Report was sent to Plaintiff. However, no objections have been received.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law.


Douglass v. United Servs. Auto. Ass’n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 3) as the findings of this Court. The Court **DISMISSES** Plaintiff’s claims, with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to the refiling of this lawsuit without seeking *in forma pauperis* status and payment of the full filing fee. It is further **ORDERED** that should Plaintiff pay the full \$402.00 filing fee within fifteen days after entry of final judgment, he shall be allowed to proceed in the lawsuit as though the full fee had been paid from the outset. Payment of the filing fee would not affect screening for frivolousness, maliciousness, or failure to state a claim under 28 U.S.C. § 1915A. The dismissal of this lawsuit shall not prevent Plaintiff from pursuing his claims in cause number 6:22-cv-399.

Signed this

Jun 13, 2023



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE